IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.126 OF 2003

The Commissioner of Income-tax,
Tarabai Park, Kolhapur .. Appellant.

V/s.

The Ugar Sugar Works Ltd., .. Respondent.

Mr.R.V. Desai, senior counsel with Ms.S.V. Bharucha i/b. K.B. Rao for the appellant.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 26TH OCTOBER, 2004.

P.C. :

Heard Mr.R.V. Desai, the learned senior counsel for the revenue.

2. In the memo of appeal, the following substantial questions of law have been proposed.

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition made towards valuation of closing stock of Rs.14,09,320/- ?

(b) Whether on the facts and in the circumstances of the case of Bansilal Abirchand [75 ITR 260] [BOM], the Tribunal was right in deleting the addition made towards excessive shortage claim of potable alcohol of Rs.8,32,347/- ?

> (c) Whether on the facts and in the circumstances of the case, the Tribunal relying on the decision of the Somaiya Orgeno Chemicals [216 ITR 291] the Tribunal was right in deleting the addition made towards affluent disposal facility reserve of Rs.35,733/- ?

3. In so far as Question (a) is concerned, the Tribunal has considered the matter elaborately and ultimately observed thus :

> "....., the records produced before the departmental authorities and so certified in the paperbook show that the assessee has supported its valuation amply. The income-tax authorities have not found any discrepancy in the maintenance of the records, nor is it their case that the records do not depict the picture as per the Governmental orders. Under these circumstances, we are of the considered opinion, that the assessee's valuation being closer to the realities and being supported by records, should be preferred. As already noted, there is no dispute that this method is being followed consistently. We have already pointed out the flaw in the method adopted by the AO. We therefore delete the addition of Rs.14,09,320."

4. We find that the consideration of the matter by the Tribunal is proper and based on available record. The proposed question (a), therefore, cannot be said to be substantial question of law.

5. As regards question (b), we find that this aspect too has been considered by the Tribunal

elaborately thus :

> ". On a careful consideration of the matter, we are of the view that the shortage as claimed by the assessee should be allowed. Firstly, there is a mistake in the figures given by the departmental authorities. They have stated that the assessee had claimed shortage of 0.47% in the earlier year. This is wrong as can be seen from page 39 of the order of the CIT(A), which contains a chart showing comparison between the year under appeal and the earlier year. This chart shows that the shortage claimed in the earlier year was 1.96%. There is roughly an increase of 0.50%. This is attributable to the increased production. Whereas the production in the earlier year was 19,89,643 litres, the production for the year under appeal is 28,51,855 litres. The shortage can arise due to various factors such as breaking during bottling, evaporation rinsing the bottles with the alcohol which cannot be reused and so on and so forth. The assessee has maintained proper records, which have been verified by the Central Excise authorities since alcohol is a commodity strictly controlled by them. It is not disputed that the Central Excise authorities themselves have fixed the normal loss at upto 5%. There is no adverse finding about the records maintained by the assessee. There is also no finding that the method of accounting followed by the assessee in this respect is defective."

6. The consideration of the matter by the Tribunal does not suffer from any legal infirmity on this aspect.

7. As regards question (c), we find that the Tribunal relied upon by the Division Bench of this Court in the case of Somaya Orgeno Chemicals [216 ITR

291]. The learned senior counsel for the revenue could not satisfy us that the decision of this Court in the case of Somaya Orgeno Chemicals is not applicable to the facts of the present case.

8. No substantial question of law arises in this appeal. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)